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From: Prichard, Gary
Sent: Mon 10/21/2013 3:13:35 PM
Subject: FW: Interesting Story on Ohio Coal and Bennoc permit

Pasted below is a newspaper story from September that provides some context on the permit matter we've been trading emails about.

U.S. policy spurs coal's EPA beef

Sep 15 - McClatchy-Tribune Regional News - Spencer Hunt The Columbus Dispatch, Ohio

A battle is being fought between Ohio coal companies and the U.S. EPA over pollution limits, and Gov. John Kasich and the Ohio EPA are caught in the middle.

The U.S. Environmental Protection Agency says the limits are necessary to protect water and told the Ohio EPA to follow its lead. Since 2010, the state agency has included the federal limits in permits issued to the coal companies.

The coal companies say the federal limits imposed are illegal and told Kasich's office that they will cost too much to comply with and that Ohio jobs are at stake.

The details of this battle have emerged after a leaked email announcing the resignation of the Ohio EPA's water chief and through records obtained by The Dispatch.

In an email he sent to his staff, George Elmaraghy wrote that Kasich and Ohio EPA Director Scott Nally forced him to resign under "considerable pressure" from coal companies for permits "that may have a negative impact on Ohio streams and wetlands and violate state and federal laws."

Since then, Elmaraghy, the Ohio EPA and the governor's office have had little to say. But on Friday, his last day on the job, Elmaraghy talked with The Dispatch.

He said he had worked with Nally and the governor's office to draft a second permit for one coal company, Murray Energy, that did not include tougher pollution limits mandated by the U.S. EPA.

Without those limits, the U.S. EPA can reject permits, according to state officials.

Elmaraghy said the governor's office told him and his staff to draft a white paper, which the Ohio EPA would send to U.S. EPA officials in Chicago, outlining why the stricter federal pollution limits were unnecessary.

"It was our best attempt to justify it," Elmaraghy said.

He also said that he repeatedly warned the governor's office and coal companies that the U.S. EPA would likely reject Murray Energy's stripped-down permit.

He said he urged them to look for ways to meet the pollution limits he believed the U.S. EPA would ultimately impose.

"This option was shut down in no time."

The coal companies say the stricter limits are illegal.

"These limits are not authorized by law, not technically feasible and are the Ohio EPA's attempt to circumvent Ohio's statutory regulations," Murray Energy said in a statement. "We addressed this matter with the governor's office, as the livelihoods of our 1,600 employees in Ohio are at stake."

Elmaraghy said that despite creating the Murray permit without the stricter limits and writing the explanation paper for the U.S. EPA, he was told by Nally on Aug. 9 that the governor's office wanted him to resign.

"He told me they wanted to 'turn a new page' with the coal companies," he said.

Elmaraghy, 66, has hired a lawyer in a bid to keep his job at the Ohio EPA, where he worked for 39 years.

Much of the issue springs from a 2010 shift in mining policy made by the U.S. EPA, including new mandates that states impose tougher limits in water-pollution permits that coal companies must obtain.

The National Mining Association argued that the tougher limits were created by sidestepping a lengthy rule-making process and won court decisions in 2011 and 2012.

Association officials said on Friday that the U.S. EPA continues to demand these limits while the case is in the U.S. Court of Appeals in Washington. The U.S. EPA has declined to comment.

Since Kasich began his gubernatorial campaign in 2009, Ohio coal interests have donated nearly

\$1 million to statewide and legislative candidates, a Dispatch analysis of data from the secretary of state's office found. That includes \$130,000 for Kasich's campaign.

Under pressure from Ohio coal companies this past spring to explain the stricter limits, Nally

wrote a letter on April 17 to the Ohio Coal Association that said U.S. EPA officials in Chicago had demanded them.

In a July 15 letter to the Ohio EPA, Kevin Pierard, a U.S. EPA water-pollution chief, said he was pleased that the Ohio EPA included the tougher limits in a draft permit for Sterling Mining, another Ohio coal company.

On Friday, Elmaraghy said the U.S. EPA demands for tougher limits first came to Ohio in 2010. He said the agency had inserted them in permits for three or four coal companies.

According to records, the governor's office started asking questions about permits for three other coal companies -- Murray Energy, Sterling Mining and Oxford Resources -- after officials with those companies and the Ohio Coal Association started to complain in late 2012.

Elmaraghy said the coal companies wanted the Ohio EPA to take coal's side in a fight with the U.S. EPA over the pollution limits. He said Craig Butler, Kasich's assistant policy director for environment, energy and agriculture, supported that approach.

In a written statement yesterday, Kasich spokesman Rob Nichols said U.S. EPA officials routinely allow West Virginia officials to grant permits that lack the stricter limits. (West Virginia environmental officials answer to a U.S. EPA office in Philadelphia; the Ohio EPA answers to a U.S. EPA office in Chicago.)

"If the federal government is not applying federal law consistently across the states, then they are putting Ohio job creators at a competitive disadvantage to our neighboring states and killing jobs in Ohio," Nichols wrote.

"That is not acceptable."

Tom Clarke, mining director for the West Virginia Department of Environmental Protection, said yesterday that the state also sued the U.S. EPA several years ago over stricter limits and has since not included them in permits.

He said the U.S. EPA office in Philadelphia still files objections to West Virginia's permits now and then.

Clarke said he has talked a number of times with Kasich's office and the Ohio EPA, and cautioned them that any permit solution Ohio comes up with will have to reflect existing state pollution limits.

The permit that Ohio created for Murray Energy without the stricter limits was sent last week to the U.S. EPA in Chicago, Elmaraghy said.

Chris Abbruzzese, an Ohio EPA spokesman, confirmed that the permit was sent and that the agency believes its limits protect the environment and people's health.

"To allege otherwise would be false."

Vivian Stockman, spokeswoman with the Ohio Valley Environmental Coalition, said the U.S. EPA-imposed limits are needed to help protect streams and people from mining pollution.

The Huntington, W.Va.-based advocacy group has filed legal arguments in the federal lawsuit supporting the U.S. EPA.

"It's a way to have guidelines and benchmarks to help (coal companies) know what levels of pollutants are acceptable," she said.

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